

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST:

EILEEN M. SOMMERS,
RESPONDENT.

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FINAL DECISION AND ORDER
93 REB 135 and 95 REB 053

The parties in this action for the purpose of Wis. Stats. sec. 227.53 are:

Eileen M. Sommers
4500 South Sunnyslope Road
New Berlin, WI 53151

The Wisconsin Real Estate Board
P.O. Box 8935
Madison, WI 537088935

The Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 537088935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. EILEEN M. SOMMERS ("Sommers"), 4500 South Sunnyslope Road, New Berlin, WI 53151, is a real estate broker having State of Wisconsin License #40752, which license was originally granted to her on April 30, 1987. Sommers' date of birth is March 19, 1966.
2. At all times relevant hereto, Sommers worked as a broker for E. J. Sommers New Berlin Realty, a firm owned and operated by her father Elmer J. Sommers. The lots of the subdivision were owned by Lakeview Development Partnership, a Wisconsin partnership, in which Elmer J. Sommers was a one-half partner."
3. As the broker representing the seller of properties through the E. J. Sommers New Berlin Realty, Sommers drafted offers to purchase for the signature of the parties and accepted earnest money for deposit and disbursement pursuant to applicable administrative rules.

4. On or about April 29, 1993 Sommers was audited by the Wisconsin Department of Regulation and Licensing. During the course of the audit, auditor Jeanne Pegelow found that Sommers violated the following provisions of the Wisconsin Administrative Code:

- a. RL 24.08, by failing to place all agreements in writing;
- b. RL 18.03, by failing to deposit all earnest money in a timely manner;
- c. RL 24.05 and 24.07 by failing to disclose seller agency and her family relationship with the seller;
- d. RL 16.02(3), by failing to indicate on the offer to purchase her status as agent for the seller;

Auditor Pegelow informed Sommers of these violations in writing. Sommers fully cooperated with auditor Pegelow in all regards, and after the audit undertook recommended steps and procedures to cure all violations.

5. On or about October 2, 1993, Sommers drafted an offer to purchase for the signatures of the buyers, Daniel J. Kakonis and Vicki L. Kakonis and the seller Elmer J. Sommers, a partner in the Lakeview Development Partnership. This offer was for the purchase and sale of property known as:

Lot 16, in Lakeview Highlands, being a Subdivision of a part of the Southeast 1/4, Southwest 1/4 and Northeast 1/4 of the Southwest 1/4 of Section 5, in Township 5 North, Range 20 East, in the City of Muskego, Waukesha County, Wisconsin.

A copy of this offer is attached hereto as Exhibit A, and incorporated herein as if set forth at length.

6. The Kakonis' offer failed to include a proper financing contingency, stating only:

"This offer is subject to financing for the lot in question and new home construction for at least the sum of \$147,000."

7. The Kakonis' offer, drafted on standard Wisconsin Vacant Land Offer to Purchase form, at lines 49 through 52, inclusive, indicated that among other items "storm sewer with laterals to lot line", were additional items included in the sale.

8. The Kakonis' requested Sommers and her father to provide the storm sewer and Sommers declined to provide the same as did her father.

9. The Kakonis' commenced suit against Sommers and her father for the damages resulting from the failure to install the storm sewer as promised. The contest of the suit was in good faith, with germane legal defenses raised, and with the settlement following on a compromise basis, with the settlement funds paid to the Kakonis' by the partnership Lakeview Development Partnership.

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Board has jurisdiction to act in this matter pursuant to sec. 452.14, Wis. Stats.

2. The Wisconsin Real Estate Board is authorized to enter into the attached Stipulation pursuant to sec. 227.44(5), Wis. Stats.

3. EILEEN M. SOMMERS has violated the following provisions of the Wisconsin Administrative Code:

- a. RL 24.08, by drafting an unenforceable financing contingency and contract in the Kakonis transaction and by previously failing to place all agreements in writing;
- b. RL 18.03, by failing to deposit all earnest money in a timely manner;
- c. RL 24.05 and 24.07 by failing to disclose seller agency and her family relationship with the seller;
- d. RL 16.02(3), by failing to indicate on the offer to purchase her status as agent for the seller;
- e. RL 24.07 and RL 24.025, by failing to make a reasonable inquiry of the seller as to whether or not the subject lot was serviced by storm sewers, and by representing to the buyers that the lot was so serviced.

The above violations of the Wisconsin Administrative Code constitute a violation of Section 452.14(3)(i) of the Wisconsin Statutes by virtue of Section RL 24.01(3), Wis. Adm. Code., in that the Respondent Eileen M. Sommers has demonstrated incompetency to act as a real estate broker in such manner as to safeguard the interests of the public.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the attached Stipulation is accepted.

IT IS FURTHER ORDERED, that the real estate broker's license of Respondent **EILEEN M. SOMMERS**, license #40752, is hereby **SUSPENDED** for a period of 60 days, said suspension commencing at 12:01 a.m. on the day immediately subsequent to the date of this Order.

IT IS FURTHER ORDERED, that Respondent EILEEN M. SOMMERS, within 180 days of the date of this Order, successfully complete the following course modules from the Real Estate Brokers course at an educational institution approved by the Department of Regulation and Licensing:

- a. The 2-hour contracts module (RL 25.02(2)(a)), and
- b. The 5-hour Trust accounts, escrow, closing statement module (RL 25.02(2)(c)),

and submit proof of the same in the form of verification from the institution providing the education to the Real Estate Board, P.O. Box 8935, Madison, WI 53708-8935. None of the education completed pursuant to this requirement may be used to satisfy any continuing education requirements that are or may be instituted by the Board or the Department of Regulation and Licensing.

IT IS FURTHER ORDERED, that in the event Respondent EILEEN M. SOMMERS fails to comply with the required education as set forth above, or fails to verify the same to the Department of Regulation and Licensing as set forth above, then her real estate broker's license shall be suspended, without further notice, hearing or Order of the Board, until he has complied with the terms of this order. The effective date of said suspension shall be at 12:01 a.m. on the 181st day subsequent to the date of this Order.

IT IS FURTHER ORDERED, that Division of Enforcement files numbered 93 REB 135 and 95 REB 053 are hereby closed as to all respondents.

Dated this 27th day of JUNE, 1996.

WISCONSIN REAL ESTATE BOARD

By: _____

WPPCH501

Attachment: Exhibit A

New Berlin

Wisconsin

October 2

1993

THE BROKER DRAFTING THIS OFFER IS THE AGENT OF SELLER (INITIAL) (Strike as applicable)

IF ACCEPTED, THIS OFFER CAN CREATE A LEGALLY ENFORCEABLE CONTRACT. BOTH PARTIES SHOULD READ THIS DOCUMENT CAREFULLY AND UNDERSTAND IT BEFORE SIGNING.

The undersigned Buyer, Daniel J and Vick L. Kakonis hereby offers to purchase the property known as (Street Address) Lot 16 Lakeview Highlands in the City of Waukesha County of Waukesha Wisconsin more particularly described as: Legal description to follow on title

at the price of forty-one thousand and 00/100 Dollars (\$41,000.00) and on the terms and conditions follows: Earnest money of \$ 300.00 in the form of check tendered with this offer. Additional earnest money of \$ 0.00 in the form of to be paid within days of acceptance of this offer or and the balance in cash at closing

Failure of Buyer to make earnest money payments as provided voids offer at Seller's option. Earnest money, if held by broker, shall be held in selling broker's trust account prior to acceptance of offer and thereafter in listing broker's trust account or until applied to the purchase price at closing or disbursed as provided herein or permitted by law. TIME IS OF THE ESSENCE AS TO: ADDITIONAL EARNEST MONEY PAYMENT, ACCEPTANCE, LEGAL POSSESSION, OCCUPANCY, DATE OF CLOSING AND AS TO ALL DATES INSERTED IN THIS OFFER EXCEPT:

THE BUYER'S OBLIGATION TO CONCLUDE THIS TRANSACTION IS CONDITIONED UPON THE CONSUMMATION OF THE FOLLOWING:

(If this offer is subject to financing, survey, percolation test, specific zoning or use, approval of recorded building and use restrictions and covenants, or any other contingency, it must be stated here. If none, so state.)

This offer is subject to financing for the lot in question and new home construction for at least the sum of \$149,000.

Seller warrants: even with basement, six courts garage and stoop.

Warrant is defined as that the seller, in the event that additional courses are necessary due to subsail conditions, seller will pay for such additional costs.

Buyer agrees that unless otherwise specified, Buyer will in good faith, pay all costs of securing any financing to the extent permitted by law, and will perform all acts necessary to expedite such financing.

INCLUDED IN THE PURCHASE PRICE ARE SUCH OF THE FOLLOWING ITEMS AS MAY BE ON THE PROPERTY ON THE DATE OF THIS OFFER, WHICH WILL BE DELIVERED FREE AND CLEAR OF ENCUMBRANCES: all fixtures, and all garden bulbs, plants, shrubs and trees.

ADDITIONAL ITEMS INCLUDED IN THE SALE: gas, electric cable, telephone, paved roads and curbs, storm sewer, with laterals to lot line.

ITEMS NOT INCLUDED IN THE SALE: none.

Seller shall, upon payment of the purchase price, convey the property by warranty deed, or other conveyance provided herein, free and clear of all liens and encumbrances, excepting municipal and zoning ordinances, recorded easements for public utilities serving the property, recording building and use restrictions and covenants, general taxes levied in the year of closing, and

above 30' planting easement, provided none of the foregoing prohibit present use, and Seller shall complete and execute the documents necessary to record the conveyance. (WARNING: Recorded building and use restrictions and covenants can have negative impact on the use, plan, improvements to the property.)

This offer is binding upon both parties only if a copy of the accepted offer is deposited, postage or fees prepaid, in the U.S. mail

or a commercial delivery system, addressed to Buyer at, 542-8894 6503 W Dodge Place Mil, or by personal delivery of the accepted offer to Buyer on or before October 21, 1993. Otherwise, this offer is void and all earnest money shall be promptly returned to Buyer.

This transaction is to be closed at the office of Buyer's mortgage or at the office of E.J. Sommers Realty on or before Nov. 29, 1993, or at such other time and place as may be agreed in writing.

Legal possession of property shall be delivered by Buyer on date of closing. It is understood the property is now occupied by vacant.

Occupancy of LAND shall be given to Buyer at closing. If Seller is permitted to occupy property after closing, Seller shall pay occupancy charge of \$ per day, which (shall) (shall not) be refundable based on actual occupancy.

The sum of \$ shall be withheld from the purchase price to be escrowed with to guarantee delivery of occupancy to Buyer AND FOR NO OTHER PURPOSE, which sum upon Seller's failure to deliver occupancy shall be paid to Buyer as liquidated damages or returned to Seller if occupancy is delivered.

80 (Seller warrants) (Marked) indicated (none) (part) (all) of the property is located in a flood plain (Strike as
81 applicable).
82 (Seller warrants) (Marked) indicates (none) (part) (all) of the property is located in a wetland (Strike as
83 applicable).

84 Seller represents that the property is zoned RESIDENTIAL
85 Seller warrants and represents to Buyer that Seller has no notice or knowledge of any
86 (a) planned or commenced public improvements which may result in special assessments or otherwise materially affect the
87 property
88 (b) government agency or court order requiring repair, alteration, or correction of any existing condition
89 (c) shoreland or special land use regulations affecting the property
90 (d) underground storage tanks and the presence of any dangerous or toxic materials or conditions affecting the property

91 EXCEPTIONS TO WARRANTIES AND REPRESENTATIONS STATED IN LINES 80 TO 90
92
93
94

95 The following items shall be prorated as of the day of closing: general taxes, rent, water and sewer use charges, homeowners'
96 association assessments, fuel, and
97 any income, taxes, or expenses through the day of closing accrue to Seller.
98 General taxes shall be prorated at the time of closing based on the net general taxes for the current year, if known, otherwise
99 on the net general taxes for the preceding year.

100 CAUTION: If property has not been fully assessed for tax purposes, or reassessments completed or pending, tax proration shall
101 be on the basis of \$ _____ estimated annual tax
102 Special assessments, if any, for work onsite actually commenced or levied prior to date of this offer shall be paid by Seller. All
103 other special assessments shall be paid by Buyer. (Caution: Consider a special agreement if area assessments or homeowners'
104 association assessments are contemplated.)

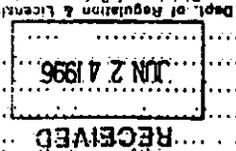
105 Seller shall provide to Buyer at Seller's expense at least three (3) business days before closing, Seller's choice of the only
106 1. An abstract of title prepared by an attorney or abstract company; or
107 2. A commitment from a title insurance company licensed in Wisconsin to issue title insurance in the amount
108 of the purchase price upon recording of proper documents;
109 showing title to the property as of a date no more than 15 days before such title proof is provided to Buyer to be in the condition
110 called for in this offer, and further subject only to liens which will be paid out of the proceeds of the closing and standard title
111 insurance exceptions or abstract certificate limitations, as appropriate. Buyer shall notify Seller of any valid objection to title in
112 writing by closing. Seller shall have a reasonable time, but not exceeding 15 days, to remove the objections, and closing shall be
113 extended as necessary for this purpose.

114 If this offer provides for a land contract, prior to execution of the land contract Seller shall provide the same evidence of title as
115 required above and written proof of or before execution, that the total underlying indebtedness, if any, is not in excess of the
116 proposed balance of the land contract, and that the payments on this land contract are sufficient to meet all of the obligations of
117 Seller on the underlying indebtedness.

118 If the transaction fails to close and the parties fail to agree on the disposition of earnest money, then earnest money held by
119 broker shall be disbursed as follows:
120 1. To Buyer, unless Seller notifies Buyer and Broker in writing no later than 45 days after the earlier of the Buyer's written
121 demand for return of the earnest money or the date set for closing, that Seller elects to consider the earnest money as
122 liquidated damages or partial payment for specific performance.
123 2. To Seller, subject to amounts payable to broker, provided the above notice is given and neither party commences a lawsuit
124 on this matter within 30 days after receipt of the notice.
125 In making the disbursement, the broker shall follow procedures in Section 11, 18.09(4), Wis. Adm. Code.

126 Disbursement of earnest money does not determine the legal rights of the parties in relation to this agreement.
127 Both parties agree to hold the broker harmless from any liability for good faith disbursement of earnest money in accordance
128 with this agreement or present Department of Regulation and Licensing regulations concerning earnest money.
129 If the property is damaged by fire or elements prior to time of closing in an amount which exceeds five per cent of the selling price,
130 this contract may be cancelled at option of Buyer. Should Buyer elect to carry out this agreement despite such damage, Buyer shall
131 be entitled to the insurance proceeds relating to damage to property.

132 SPECIAL PROVISIONS: none
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134
135
136



137 Seller and Buyer agree to act in good faith and use diligence in compliance with the terms of this agreement. This agreement binds
138 and inures to the benefit of the parties to this agreement and their successors in interest.

139
140
141 (Buyer) _____ (Buyer)
142 Buyer's Social Security No. 395-82-7131 Buyer's Social Security No. 299-688125

143 THIS OFFER IS HEREBY ACCEPTED. THE WARRANTIES AND REPRESENTATIONS MADE
144 HEREIN SURVIVE THE CLOSING OF THIS TRANSACTION. THE UNDERSIGNED HEREBY AGREES
145 TO SELL AND CONVEY THE ABOVE MENTIONED PROPERTY ON THE TERMS AND CONDITIONS
146 AS SET FORTH AND ACKNOWLEDGES RECEIPT OF A COPY OF THIS AGREEMENT.

147 Dated: Oct 2 1993
148 Offer is rejected (Seller initial) _____ Seller's Social Security No. _____
149 Offer is countered (Seller initial) _____ (Seller)
150
151
152 Seller's Social Security No. _____

153 This offer was drafted by (licensed agent) _____
154 It was presented to Seller by _____

155 BARNES MONEY RECEIPT
156 Broker acknowledges receipt of initial earnest money on or before the line of the above offer.
157 Dated: Oct 2 1993
158 _____ Broker

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST:

EILEEN M. SOMMERS,
RESPONDENT.

STIPULATION

93 REB 135 and 95 REB 053

The parties in this matter agree and stipulate as follows:

1. This Stipulation is entered into for the purpose of resolving this matter known as investigative files 93 REB 135 and 95 REB 053. EILEEN M. SOMMERS ("Respondent") consents to the resolution of this matter by this Stipulation and the attached Final Decision and Order.
2. Respondent understands that by the signing of this Stipulation she voluntarily and knowingly waives her rights, including: the right to a hearing on the allegations against her, at which time the State has the burden of proving those allegations; the right to confront and cross-examine the witnesses against her; the right to call witnesses on her behalf and to compel their attendance by subpoena; the right to testify herself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to her under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.
3. Respondent has had the opportunity to consult with legal counsel regarding these matters and the legal implications of this Stipulation. Respondent is represented by Attorney Glen B. Kulkoski, P.O. Box 51064, New Berlin, WI 53151.
4. Respondent voluntarily and knowingly waives the rights set forth in paragraph 2 above, on the condition that all of the provisions of this Stipulation are approved by the Board.
5. With respect to the attached Final Decision and Order, Respondent admits the facts as set forth in the Findings of Fact and agrees that the Board may make the Findings of Fact and may reach the Conclusions set forth in the Conclusions of Law and may enter the Order attached hereto.
6. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation or the proposed Final Decision and Order. The matter shall then be returned to the Division of Enforcement for further proceedings. In the event that the Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

7. If the Board accepts the terms of this Stipulation, the parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties.

8. Respondent agrees that Complainant's attorney, Charles J. Howden, may appear at any meeting of the Board with respect to the Stipulation and that his appearance is limited to statements in support of the Stipulation and to answer any questions the Board may have regarding the Stipulation. Respondent waives her right to have notice of that hearing and to be present at the meeting of the Board.

9. The Division of Enforcement joins Respondent in recommending that the Board adopt this Stipulation and issue the attached Final Decision and Order.

Eileen M Sommers
EILEEN M. SOMMERS, Respondent

6/11/96
Date

Glen B. Kulkoski
GLEN B. KULKOSKI, Attorney
for Respondent
P.O. Box 51064
New Berlin, WI 53151

6-21-96
Date

Charles J. Howden
Charles J. Howden, Attorney
Division of Enforcement

6/24/96
Date

WPPCHH501/June 7, 1996

NOTICE OF APPEAL INFORMATION

Notice Of Rights For Rehearing Or Judicial Review, The Times Allowed For Each, And The Identification Of The Party To Be Named As Respondent.

Serve Petition for Rehearing or Judicial Review on:

STATE OF WISCONSIN REAL ESTATE BOARD

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708.

The Date of Mailing this Decision is:

June 27, 1996

1. REHEARING

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

2. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)